

Hon. C. Steven McMurry, Chair  
Committee on Improving Small Claims Case Processing  
1501 W. Washington St., Ste. 410  
Phoenix, AZ 85007

IN THE SUPREME COURT

STATE OF ARIZONA

PETITION TO ADOPT ARIZONA	)	
RULES OF SMALL CLAIMS	)	
PROCEDURE AND MODIFY	)	Supreme Court No. R-18-0021
RULE 101(b) OF THE JUSTICE	)	
COURT RULES OF CIVIL	)	Reply to Third Amended
PROCEDURE	)	Petition Comments
	)	
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Consistent with Rule 28 of the Rules of the Arizona Supreme Court and this Court's November 13, 2018 scheduling order, Petitioner hereby submits this Reply.

**I. Introduction**

The rule petition has had four comment periods since the filing of the initial petition on January 10, 2018. It is important to note that this Court authorized two concurrent pilot programs during the pendency of the rule petition. The purpose of multiple comment periods was to allow the Committee on Improving Small Claims

Case Processing (“Committee”) to reconvene, address issues raised by the comments, review pilot program data, and amend the rule petition thereafter.

The first comment period ended on March 16, 2018 and produced three comments. The Committee reconvened on April 18, 2018 to discuss the comments and recommended a number of modifications to its originally proposed Arizona Rules of Small Claims Procedure (“Rules”). An amended petition reflecting these changes was filed on April 27, 2018.

The second comment period ended on September 7, 2018 and produced two comments. The Committee reconvened on September 11, 2018 to discuss the comments and pilot program data and recommended a number of modifications to the proposed Rules. A second amended petition reflecting these changes was filed on September 19, 2018.

The third comment period ended on October 19, 2018 and produced six comments. The Committee reconvened on May 22, 2019 to discuss the comments and pilot program data and recommended a number of modifications to the proposed Rules. A third amended petition reflecting these changes was filed on May 24, 2019.

The fourth comment period ended on June 28, 2019 and produced two comments. Petitioner, on behalf of the Committee, files this Reply in response to these comments.

## **II. Comments Filed**

**A.** A comment was filed by the Honorable Gerald Williams on June 25, 2019 on behalf of several of the Maricopa County Justices of the Peace. The comment proposes an alternative set of rules that addresses many topics that were discussed at the Committee's May 22, 2019 meeting. Ultimately, the Committee declined to modify the proposed Rules in many of these areas.

Additionally, although none of the justices of the peace who signed onto the June 25, 2019 comment were present at the May 22, 2019 Committee meeting, the Presiding Maricopa County Justice of the Peace and Maricopa County Justice Court Administrator were present. Committee members addressed the presiding justice of the peace and justice court administrator specifically to inquire as to whether all outstanding concerns had been addressed. They answered in the affirmative.

The following are the suggestions contained in the alternative set of proposed small claims rules in the June 25, 2019 comment:

***(a) Format Proposed Rules to Align with Justice Court Rules of Civil Procedure.***

Petitioner is neutral on this point, if the Court is inclined to add headings and subheadings to the proposed Rules. However, the Committee has reviewed the proposed Rules on numerous occasions and takes the position that the formatting

of the proposed Rules is sufficient to provide judicial and litigant guidance and reference throughout.

***(b) Include Examples in Rules.***

The Committee takes the position that rules of procedure should be just that—rules of procedure. While examples can be helpful in some instances, the Committee does not take the position that rules of procedure are the appropriate forum for including examples. Including examples may be interpreted to limit application of a rule in certain aspects, and examples are better suited in educational materials that will be made available to the public and in court staff training materials. Additionally, the proposed Rules include an information sheet that is provided to the plaintiff and defendant, which includes several examples. Lastly, the Committee has ensured that the Administrative Office of the Courts intends to provide educational and publication materials that will be useful to the public regarding the small claims process.

***(c) Requiring a Notice of Authorization to be Filed.***

The June 25, 2019 comment proposes that the requirement for corporations, partnerships, business, etc., to file a notice indicating who is authorized to appear on behalf of the corporation, partnership, business, etc., be removed. The Committee decided very early in the process that requiring this notice is helpful to

courts and does not unduly hinder the parties. The Committee recommends leaving this provision as is.

***(d) Amendments to the Complaint.***

The Committee has had several discussions regarding whether complaint amendments should be permitted. The Committee maintains that because the small claims process is one that the Arizona Legislature intends to be “speedy,” allowing amended complaints would frustrate this intent. Allowing amended complaints would require that an amended summons be issued, allowing additional time for service in some cases, allowing additional time for added defendants to answer, etc. It is the Committee’s position that in order to streamline the small claims process, no amended complaints should be permitted.

***(e) Amendments to a Counterclaim.***

For the reasons listed above regarding not allowing amended complaints, the Committee takes the position that no amended counterclaims should be permitted. Additionally, allowing an amended counterclaim in a process where an amended complaint is not permitted presents due process concerns. Lastly, pilot program data has shown that counterclaims are rare in small claims cases, and an amendment to a counterclaim is even more rare. The Committee takes the position that the rules should be drafted in a manner that will address the vast majority of

scenarios that will occur and not in a manner that attempts to address *every possible* scenario, especially scenarios that are not likely to occur.

***(f) Limit Counterclaims to the Same Occurrence or Transaction.***

The June 25, 2019 comment suggests that counterclaims should be limited to the same occurrence or transaction from which the complaint originated. The Committee has discussed this issue on several occasions and maintains that as a matter of judicial efficiency, if the defendant has a claim against the plaintiff (for whatever reason), the defendant should be able to present that to the court in a counterclaim. The court can then handle the matters in one proceeding. Additionally, to reiterate, counterclaims in small claims cases are rare, and the Committee does not anticipate that a counterclaim on an unrelated transaction or occurrence will happen frequently, but the Committee wants to provide the option.

The June 25, 2019 comment also suggests that the rule regarding counterclaims should include a requirement that the plaintiff file a reply within 20 days. The Committee specifically chose to stay silent on replies to counterclaims because (1) replies to counterclaims in small claims cases are extremely rare, and (2) once an answer is filed by the defendant, the case will be set for hearing. The court will have both parties together at that time and can handle the counterclaim if one is presented. The Committee does not want to complicate the rules with a requirement that is unnecessary and addresses an extremely rare occurrence.

***(g) Addresses.***

The June 25, 2019 comment suggests changing Rule 3 to require a *mailing* address instead of a *physical* address. The Committee has no objections to this change.

***(h) Notice to Parties to Continue Litigating Case After Proof of Service Filed.***

Based on pilot program data and suggestions received from the Maricopa County Justice Court representation at the May 22, 2019 Committee meeting, the Committee adopted a process by which the parties would be notified of the requirement to continue litigating the case after proof of service has been filed. Failure to do so within 65 days may result in the case being dismissed. After hearing from Maricopa County Justice Court representatives, the Committee agreed that having courts mail this notice in every case that has had proof of service filed will remind parties early in the process that they need to move their case forward.

Additionally, the Committee does not support a process in which cases are simply dismissed by the court without prior notice to the parties. Having a set point in time at which this notice is sent to all parties (after proof of service has been filed) is not only easier from a case management system programming perspective, but it also provides equal treatment to all litigants instead of having

only certain cases receive notice and having other cases dismissed without prior notice to the parties.

***(i) Motions.***

The June 25, 2019 comment suggests adding several motions to the proposed rules. However, Arizona Revised Statute § 22-505 specifically states, “[a] motion for change of venue and a motion to vacate a judgment are the only motions allowed in a small claims action. These motions shall be heard only by a justice of the peace.” The legislature presumably added this statutory provision to keep the small claims process “inexpensive, speedy and informal.” Allowing numerous motions in the small claims process would frustrate this process, as motions can sometimes be complex in nature, may require a response from the other party, require additional staff processing, require judicial review, etc.

While the Committee does not dispute that the small claims statutes probably need to be reviewed at some point, its intent at this time is to have a set of rules for small claims cases that comport with statute, without the need for statutory amendments. The Committee does not support allowing additional motions in small claims cases aside from what the legislature has explicitly authorized.

***(j) Setting the Hearing.***



The June 25, 2019 comment suggests a rule that would allow the court to set the case for hearing *or* mediation upon the filing of an answer. Arizona Revised Statute § 22-515 states, “[o]n the filing of an answer by the defendant, the clerk shall set the action for hearing.” Allowing the case to be set for mediation *instead* of a hearing does not comport with this statute. While the Committee supports alternative means for dispute resolution, it does not support setting the case for mediation instead of a hearing. Specifically, the Committee’s proposed Rule 15 allows the court to refer the case to an alternative dispute resolution program at any time before the hearing. If the alternative dispute resolution session is successful, the court can vacate the hearing it previously set.

***(k) Mandatory Dismissal.***

The June 25, 2019 comment suggests *requiring* that courts dismiss a case 45 days after the defendant’s time for answer has expired if the plaintiff has not requested a default judgment. The Committee discussed this topic at its May 22, 2019 meeting and at the advice and in agreement with the Maricopa County Justice Court representatives present at the May 22, 2019 Committee meeting, the Committee opines that dismissal for lack of prosecution should be at the court’s discretion and not be mandatory under these circumstances. This is because there may be several reasons why a court would not want to dismiss the case, e.g., a hearing has been scheduled, a continuance has been granted, etc. The Committee

opines that it is best to leave the discretion with the local court handling the case as it relates to case dismissal after proof of service has been filed.

**B.** A comment from Ms. Ellen Katz, filed on behalf of the William E. Morrison Institute for Justice, raises several concerns outlined below.

***(a) Requirement to File an Answer.***

Ms. Katz raises a concern related to the timeframe required for the defendant to file a written answer. Specifically, she suggests that the timeframe to file a written answer or counterclaim should be extended from 20 days to 35 days. Arizona Revised Statute § 22-514 sets the time for filing an answer at 20 days after service. The Committee takes the position that changing this timeframe would create a rule that conflicts with the time allotted by statute. The Committee takes the position that this proposed rule should remain unchanged.

***(b) Notice to the Plaintiff and Defendant.***

Ms. Katz raises concerns related to the lack of guidance for what constitutes an answer in the Notice to Plaintiff and Defendant. The Committee takes the position that adding this information to the document would create an excess of information that would likely be overlooked by most litigants. Additionally, the Committee has gained assurance from the Administrative Office of the Courts that resources, instructions, and forms will be made available to self-represented

litigants so that they will be able to obtain this information in a direct manner rather than reading through a summary document to find what they are looking for.

Ms. Katz also raises concerns that the font size on the Notice to the Plaintiff and Defendant is too small. The font size is the result of the Committee's attempt to keep this a one-page document. The Committee believes that the information provided on this document is important to both parties and should not exceed one page in length.

Ms. Katz also commented that language should be added to the Notice to the Plaintiff and Defendant to indicate that the defendant **MUST** transfer the case to the civil division to preserve the rights listed on the notice, such as the right to appeal, the right to an attorney, etc. The Committee discussed this comment at its September 11, 2018 meeting. The Committee agreed that this borders on legal advice and should not be put in the proposed Rules. The Committee agreed that similar language may be more appropriate in educational materials for litigants.

***(c) Time to File Proof of Service.***

Ms. Katz raises a concern related to the inability of the plaintiff to seek an extension for time to file proof of service. While the Committee understands that there are outlying cases where the plaintiff may experience trouble in meeting this standard, the occurrence is rare. The Committee based its decision to reduce the time to file proof of service to 45 days on pilot program data that reflects the

average time to execute service is 20 days. This statistic, coupled with the legislative intent that small claims is supposed to be a speedy means of case resolution, are the basis of the Committee's decision to set a deadline of 45 days to file proof of service. It is the Committee's position, based on pilot program data, that 45 days is more than ample time to execute and file proof of service in a small claims case. The Committee suggests that this provision remain as is.

***(d) No Amended Complaints.***

Ms. Katz raises a concern related to the prohibition of amended complaints. For the reasons stated in section (II)(A)(d) of this Reply, the Committee reiterates that the small claims process is one that the Arizona Legislature intends to be "speedy," and allowing amended complaints would frustrate this intent. The Committee has discussed this topic at multiple meetings and maintains that in order to streamline the small claims process, no amended complaints should be permitted.

***(e) Defendant's Failure to Appear.***

Ms. Katz raises a concern related to the defendant's failure to appear at a hearing, suggesting that the court should consider any evidence submitted by the defendant, even if he or she fails to appear at the hearing. The Committee has remained silent as to whether the defendant's evidence, if any, will be considered in this scenario. The Committee does not want to encourage failure to appear at

the hearing merely because defendants have submitted their evidence ahead of time. The Committee believes that Arizona's justices of the peace will exercise discretion when reviewing evidence submitted when the defendant fails to appear at the hearing, but does not believe that this verbiage belongs in the proposed Rules. The Committee takes the position that this proposed rule should remain unchanged.

***(f) Conduct of Hearings.***

Ms. Katz commented on the lack of explicit language in the proposed Rules to allow parties to object to documentary and witness evidence at the hearing. The proposed Rules remain silent on this. The Committee reiterates the need to keep the small claims process and proposed Rules simple and not overcomplicated. Again, the Committee believes that Arizona's justices of the peace will exercise appropriate discretion in this area.

Ms. Katz also raises a concern related to proposed Rule 14 that allows telephonic appearances if the court allows telephonic hearings. The allowance of a telephonic hearing falls within the realm of court policy and judicial decision regarding the request. The Committee does not believe it is the place of the proposed Rules to set a policy in this regard for every justice court in Arizona. The Committee believes that Arizona's justices of the peace will exercise appropriate discretion in this area.

***(g) Requests for an Interpreter or Special Accommodations.***

Ms. Katz raises concerns regarding the timeframe set forth in proposed Rule 16 regarding requests for reasonable accommodations. The Committee discussed the language of this proposed Rule at its September 11, 2018 meeting. The Committee discussed changing the timeframe to “as soon as possible,” but Committee members agreed that a solid deadline keeps the process streamlined so that court staff can make the appropriate arrangements, which avoids having to reschedule hearings. The Committee Chair emphasized that the proposed Rule makes use of the word “should,” and that judges and hearing officers are adequately trained to ensure that decisions rendered are compliant with Title VI.

***(h) Information Disclosure.***

Ms. Katz raises concerns related to party contact information being provided to the court so that the court can communicate with the parties when necessary. Specifically, the proposed Rules do not provide a method by which parties can keep their information confidential by allowing alternative methods and formats by which the information can be provided to the court. Since the proposed Rules do not indicate a specific format or method for providing this information to the court, it is the Committee’s position that courts can implement local procedures for this safeguard, without the need to modify the language of the proposed Rules. This

information will be made available in informational material that will be developed for litigants. Judicial officers and court staff will be trained in this area.

***(i) Subpoena Issuance.***

Ms. Katz raises concerns that the proposed Rules lack instructions for the issuance of a subpoena. It is the Committee's position that this should be addressed through instructional materials for litigants and not through the proposed Rules.

**III. Conclusion**

The Committee appreciates the comments stakeholders submitted during the comment periods, which have allowed the Committee to improve its work product.

RESPECTFULLY SUBMITTED this 5<sup>th</sup> day of July, 2019

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